IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

WP(C).No. 11633 of 2007(S)

AGAINST THE ORDER DATED 12/02/2007 IN CMP.784/01,CMP.567/02 IN CMP.760/2000 CMP 1334/03 & CMP 202/06 of FAMILY COURT,KOZHIKODE

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PETITIONER:

C.K.ABDULLA, CHATHOTH THAZHEKUNI HOUSE,
CHELAKKAD P.O., VADAKARA.

BY ADV. SRI.P.A.AUGUSTINE(AREEKATTEL)

RESPONDENTS:
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1. AYISHA,
POYILIL HOUSE, CHELAKKAD P.O., VADAKARA.

2. SAFEERA, AGED 21 YEARS,
POYILIL HOUSE, CHELAKKAD P.O., VADAKARA.

3. HARRIS, AGED 18 YEARS,
POYILIL HOUSE, CHELAKKAD P.O., VADAKARA.

4. AJEER, AGED 16 YEARS (MINOR),
POYILIL HOUSE, CHELAKKAD P.O., VADAKARA.
(REP. BY 1ST RESPONDENT).

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

KURIAN JOSEPH & K.T.SANKARAN, JJ.

W.P.(C) No.11633 of 2007

Dated 4th April, 2007.

J U D G M E N T

Sankaran, J.

The question involved in this writ petition is whether the order for payment of maintenance to the minor child and which was directed to be paid to the mother of the child as guardian would be satisfied, if the respondent in the maintenance petition pays the amount directly to the child on her attaining majority.

2. In M.C.143/99 filed by the respondents herein claiming maintenance from the petitioner herein, the Family Court awarded maintenance at the rate of Rs.500/- per month to the first respondent and Rs.400/- each per month to the respondents 2 to 4, by order dated 12th November, 1999. Five Miscellaneous Petitions were filed before the Family Court for realisation of the amount of maintenance due for the period from 16.4.1999 to 6.2.2006. The writ petitioner (father of respondents 2 to 4) contended that he paid all the amounts due as per the

order in the M.C. to the second respondent, Safeera, who attained majority subsequently and therefore, the Miscellaneous Petitions are not maintainable. The writ petitioner further contended that he sent cheques to Safeera for a total sum of Rs.1,18,000/- and she cleared those cheques and appropriated the amounts. In an attempt to prove that the cheques were sent and the amounts were withdrawn from the Bank, the Manager of the Bank was examined as RW1 and Exts.X1 and X2 were marked.

3. The respondents herein, on the other hand, contended that the maintenance amount awarded by the Family Court was not paid, as directed by the court. Safeera was residing with her father for quite some time and she was given in marriage by the father, and her whereabouts are not known to the first respondent. The Family Court, on evidence, came to the conclusion that Safeera was residing with her father at the relevant time. The contention of the respondents is that in an attempt to defeat the order passed by the Family Court, the writ petitioner has manipulated things in such a way that the cheques were issued in favour of Safeera and the money was actually drawn by the writ petitioner.

4. The Family Court did not accept the contention raised by the writ petitioner and held that he has not complied with the order passed by the court below. It was held that under Section 125 of the Code of Criminal Procedure, the maintenance awarded to the minor children should be paid to the person who was authorised to receive it. The writ petitioner admittedly having not paid the amount to the first respondent, the mother of the children, it cannot be said that the order was complied with.

5. Section 125 of the Code of Criminal Procedure provides that if any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, or his legitimate or illegitimate minor child, unable to maintain itself, a Magistrate of the first class may, pass an order to pay maintenance to them at such monthly rate, as such Magistrate thinks fit and to pay the same to such person, as the Magistrate may from time to time direct. In the case on hand, the Family Court directed the maintenance payable to the three children to be paid to the first respondent mother. Therefore, going by the order passed by the Family Court, the first respondent mother alone is entitled to realise the amount of maintenance and the writ petitioner could pay the amount only to her. There cannot be

any payment to any other person in order to satisfy the order passed by the Family Court. The contention that the amount was paid to the minor child on her attaining majority cannot be countenanced and it cannot be treated as payment, as provided under Section 125 of the Code of Criminal Procedure. Section 128 of the Code of Criminal Procedure provides that a copy of the order of maintenance or interim maintenance and expenses of proceeding, as the case may be, shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance for the maintenance or interim maintenance or expenses is to be paid. Section 128 provides for enforcement of the order of maintenance. The words employed in Section 128 would also support the conclusion that the payment is to be made to the guardian mother. A combined reading of Sections 125 and 128 of the Code of Criminal Procedure would unmistakably lead to the conclusion that the liability of a person who was directed to pay maintenance to the minor children and which was directed to be paid to the guardian mother, would be discharged only by payment to the guardian mother and to none else. So long as the direction to pay the amount to the guardian of the minor continues, no payment in

contravention of such direction could be recognised as a valid compliance of the order. A payment which is not recognised by law and the direction of the court cannot be accepted as valid discharge of the order for payment of maintenance. The contentions put forward by the petitioner were rightly rejected by the Family Court. There is no irregularity or illegality in the order, and the order does not call for any interference. The writ petition is accordingly dismissed.

Learned counsel for the petitioner submits that the writ petitioner may be afforded a reasonable time to pay the amounts of maintenance. The petitioner is free to approach the Family Court for appropriate orders in this regard.

KURIAN JOSEPH, JUDGE.

K.T.SANKARAN, JUDGE.

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KURIAN JOSEPH & K.T.SANKARAN, JJ

L.A.A. NO. OF 2004

J U D G M E N T

Dated 8th March, 2007.

KURIAN JOSEPH & K.T.SANKARAN, JJ.

L.A.A.No. of 2003

Dated 21st March, 2007.

J U D G M E N T

Kurian Joseph, J.

KURIAN JOSEPH, JUDGE.

K.T.SANKARAN, JUDGE.

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KURIAN JOSEPH & K.T.SANKARAN, JJ

L.A.A. NO. OF 2004

J U D G M E N T

Dated 8th March, 2007.